

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Angela Motte	Team: Team # 4	CCRB Case #: 200203200	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/03/2002 10:00 AM	Location of Incident: Jay Street & Borough Hall subway station in Brooklyn	Precinct: 84	18 Mo. SOL 10/3/2003	EO SOL 10/3/2003	
Date/Time CV Reported Tue, 05/14/2002 4:06 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 05/14/2002 4:06 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Wayman	15252	929342	TB DT30
2. POM Thomas Marksberry	28033	927605	TB DT30

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Mildred Dorta	03323	928216	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Wayman	Abuse: PO Christopher Wayman frisked and/or searched § 87(2)(b)	
B.POM Thomas Marksberry	Abuse: PO Thomas Marksberry frisked and/or searched § 87(2)(b)	

### Synopsis

On May 14, 2002, CCRB received a letter from § 87(2)(b) § 87(2)(b) stated that on April 3, 2002 at approximately 10:00 a.m. at the Jay Street and Borough Hall subway station in Brooklyn, her son § 87(2)(b) and his friend, § 87(2)(b) were stopped by three officers. She stated that the officers stopped them because they used their student metro cards on a non-school day. She stated that since they did not have identification, the officers searched and handcuffed them. She further stated that they were searched two additional times afterwards. She stated that § 87(2)(b) told her that his handcuffs were tight and that he could not move his wrist. § 87(2)(b) was not a witness to this incident.

The subject officers, PO Christopher Wayman and PO Thomas Marksberry were identified based upon Police Department documents and the statements provided by the officers and witness officer, PO Mildred Dorta. § 87(2)(g)

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### Summary of Complaint

On June 4, 2002, § 87(2)(b) a § 87(2)(b) -old § 87(2)(b) was interviewed at CCRB in the presence of his mother, § 87(2)(b) § 87(2)(b) stated that on April 3, 2002 at approximately 10:00 a.m. at the Jay Street and Borough Hall subway station in Brooklyn, he and § 87(2)(b) were stopped by three uniformed officers for using their student metro card on a non-school day. § 87(2)(b) admitted to using his student metro card on a non-school day, stating that it was winter recess. § 87(2)(b) stated that PO #1 (male, White, over 5'9", ~170-180 lbs., and blond hair), later identified as PO Thomas Marksberry, asked him what did he use to enter the subway. § 87(2)(b) and § 87(2)(b) showed PO Marksberry the metro cards they used. PO Marksberry told them that they could not use the metro cards. When § 87(2)(b) asked why, PO Marksberry told him that it was because there was no school that day. PO Marksberry then asked them for identification but neither of them had any. He stated that the officers discussed amongst themselves whether they should issue them a summons or take them back to the command. PO #2, (male, White, shorter, chubbier, light brown or blond hair, wearing glasses) identified as PO Christopher Wayman, decided that the officers should take them to the command. PO #2 then proceeded to pat down and search § 87(2)(b) and PO #3 (female, Mexican, ~5'2", black hair) identified as PO Mildred Dorta, proceeded to pat down and search § 87(2)(b) § 87(2)(b) described the search as the officers having them remove all items from their pockets and asking them if they had any weapons. PO Wayman then handcuffed § 87(2)(b) and PO Dorta handcuffed § 87(2)(b) § 87(2)(b) stated that the officers then searched them again. PO Marksberry then made a radio call but he did not hear the conversation. They waited briefly then were told to walk upstairs to the street level, where he and § 87(2)(b) were placed in a marked patrol car. A White and a Black female officer were inside the patrol car. § 87(2)(b) and § 87(2)(b) were taken to the Hoyt and Schermerhorn Street subway station. PO Dorta rode with them while PO Marksberry and PO Wayman were in a separate car. At the station, they were taken to a room where they were patted down and searched again by PO Wayman and PO Marksberry. § 87(2)(b) § 87(2)(b) complained that the handcuffs were too tight at which time an unidentified officer removed the handcuffs. They were placed in a cell, where PO Marksberry and PO Wayman had them to remove their belts, sneakers, jewelry (chain), and shoe laces. They remained in the cell alone, until § 87(2)(b)'s sister came to pick him up. When he left, § 87(2)(b) was still there. § 87(2)(b) received a summons for § 87(2)(b). His mother paid a fine of \$60.00. § 87(2)(b) stated that none of the officers used physical force or spoke discourteously toward them. § 87(2)(b) did not sustain any injuries.

### **Results of Investigation**

§ 87(2)(b) who is a minor, did not cooperate with the investigation. On June 12, 2002, the investigator left a message for § 87(2)(b) or his mother, § 87(2)(b) to contact the investigator on the answering machine. On June 14, 2002, § 87(2)(b) was contacted requesting that she speak to § 87(2)(b) and ask her to contact the investigator and attempt to obtain a mailing address. Also, the investigator attempted to contact § 87(2)(b) and spoke to § 87(2)(b) who gave the investigator his home address. On June 19, 2002 a message was left on the answering machine requesting that the § 87(2)(b)s contact the investigator. On June 27, 2002 a message was left with § 87(2)(b) asking him to have his mother contact the investigator. Contact letters were sent on June 14, 2002, June 19, 2002, and June 28, 2002. To date, neither § 87(2)(b) nor § 87(2)(b) contacted the investigator.

The officers were identified by Police Department documents and the officers' own testimonies. PO #1 as described by § 87(2)(b) is PO Thomas Marksberry, PO #2 is PO Christopher Wayman (who stated that he wears glasses), and PO #3 is PO Mildred Dorta.

On August 19, 2002, PO Wayman was interviewed at CCRB. On April 3, 2002, PO Wayman worked with PO Marksberry and PO Dorta. PO Wayman stated that as they were standing inside the turnstile area of the Jay Street and Borough Hall subway station, they observed two males, identified as § 87(2)(b) and § 87(2)(b) swiping student metro cards on a non-school day. The officers approached them and explained that they were stopped for using their student metro card on a non-school day. The officers asked for identification but neither of them had any. PO Wayman stated that he handled § 87(2)(b) while PO Dorta handled § 87(2)(b). PO Wayman and PO Dorta decided to place them under arrest since they did not have any identification. PO Wayman handcuffed § 87(2)(b) and PO Dorta handcuffed § 87(2)(b). PO Wayman searched § 87(2)(b) and PO Marksberry searched § 87(2)(b). The search consisted of the officers going into § 87(2)(b) and § 87(2)(b)s pockets. This occurred prior to placing § 87(2)(b) and § 87(2)(b) in the patrol car. A patrol car responded but PO Wayman could not recall who responded. § 87(2)(b) and § 87(2)(b) were taken to Transit District #30 at the Hoyt and Schermerhorn Street subway station. § 87(2)(b) and § 87(2)(b) were searched again in front of the desk by PO Wayman and PO Marksberry and then placed in the holding cell, where the officers had them remove their shoelaces and belts as a safety measure. The desk officer conducted a warrant check. § 87(2)(b) and § 87(2)(b) were both issued summonses as per Sgt. David Portalatin and released to a family member. PO Wayman prepared § 87(2)(b)s summons. PO Wayman denied purposely tightening handcuffs on any civilians.

PO Mildred Dorta was interviewed at CCRB on September 27, 2002 and PO Thomas Marksberry was interviewed on October 10, 2002. § 87(2)(g) PO Dorta stated that she handcuffed § 87(2)(b) and PO Wayman handcuffed § 87(2)(b). PO Wayman and PO Marksberry then patted § 87(2)(b) and § 87(2)(b) down prior to placing them in the patrol car. She denied searching or frisking § 87(2)(b) or § 87(2)(b). When they were taken to the district, they were searched in front of the desk and placed in a holding cell. Their shoelaces and belts were taken as a precautionary procedure. She called § 87(2)(b)s aunt while someone else called § 87(2)(b)s relative. § 87(2)(b) and § 87(2)(b) were then issued summonses as per Sgt. Portalatin. PO Dorta prepared § 87(2)(b)s summons. She denied purposely tightening handcuffs on any civilians.

PO Marksberry stated that he did not handcuff anyone and could not recall who responded to the scene. He did not purposely tighten handcuffs on anyone. He stated that he searched one of the individuals while PO Wayman searched the other. The individuals were placed in a holding cell after their shoelaces and belts were taken. He stated that he dealt with one of them but could not say who dealt with the other individual. He did not recall any of the civilian witnesses' relatives coming to the district. As per Sgt. Portalatin, the two were issued summonses for theft of services.

### **Conclusions and Recommendations**

**A) Abuse: PO Christopher Wayman frisked and/or searched § 87(2)(b) (PG 212-11)**

**B) Abuse: PO Thomas Marksberry frisked and/or searched § 87(2)(b) (PG 212-11)**

§ 87(2)(g) There is no question that Police Officers Christopher Wayman, Thomas Marksberry, and Mildred Dorta of Transit District #30 stopped § 87(2)(b) and § 87(2)(b) after they utilized their student metro cards on a non-school day to enter the subway system. Neither § 87(2)(b) nor § 87(2)(b) had identification and were subsequently taken to the district office where summonses were issued to them for § 87(2)(b). § 87(2)(b)'s mother, § 87(2)(b) filed the complaint but did not witness the incident.

When § 87(2)(b) was interviewed, he alleged that the male White officer, who was not wearing glasses, identified as PO Marksberry, frisked and searched § 87(2)(b) and that the female "Mexican" officer, identified during the investigation as PO Dorta, patted him down, searched him and tightly handcuffed him. § 87(2)(g)

§ 87(2)(b) PO Dorta denied frisking or searching any of the individuals whereas PO Wayman admitted to frisking and searching § 87(2)(b) after he handcuffed him. PO Marksberry also indicated that he conducted a frisk along side PO Wayman. § 87(2)(g)

§ 87(2)(g)

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According to the New York City Police Department Patrol Guide, section 209-09, entitled "Personal Service of Summonses Returnable to Traffic Violations Bureau or Criminal Court," (p. 576) officers are instructed to "1) inform violator of the offense committed, 2) request that violator show proof of identity and residence, 3) conduct license and warrant check, and 4) remove violator to command for investigation if doubt concerning identity exists." § 87(2)(g)

the frisk and search committed by the officers were incident to arrest. According to Kamins Search and Seizure Law, (p. 306) "A search incident to a lawful arrest is an exception to the warrant requirement. It normally consists of a search of the suspect's person and the area within his immediate control. The

search is justified by two exigent circumstances: (1) the safety of the arresting officer who must be permitted to search and seize weapons and (2) the preservation of evidence within the reach of the suspect.”

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: